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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Reexamination of Comparative Standards) MM Docket No. 95-31
for Noncommercial Educational Applicants)

To: The Commission

JOINT COMMENTS OF THE EXECUTIVE COMMITTEE
OF THE TRUSTEES OF BOSTON UNIVERSITY
AND WRNI FOUNDATION

The Executive Committee of the Trustees of Boston University is the licensee of non-commercial educational ("NCE") broadcast stations WBUR-FM, Boston, Massachusetts and WBUR-AM, West Yarmouth, Massachusetts. WRNI Foundation is the licensee of WRNI-AM, Providence, Rhode Island and the pending transferee of WXNI-AM, Westerly, Rhode Island.

The Commission's *Further Notice of Proposed Rulemaking* (the "Notice") was published in the Federal Register on October 30, 1998. The comment and reply comment deadline dates were extended to January 28, 1999 and March 15, 1999, respectively, by further notice of the Commission.

While we agree that the Commission's procedures to resolve conflicts in NCE proceedings are long overdue, the Commission has proposed dramatic changes to the methods by which NCE television and radio broadcasters obtain new licenses and secure major modifications to their existing licenses. The Commission has proposed a completely new process, along with a

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completely new set of potential criteria to determine how NCE broadcast licenses will be allocated among competing applicants for the foreseeable future.

It is our position that adoption of the rules as proposed would represent an abdication of one of the Commission's most important responsibilities - management of spectrum use in the public interest. Reservation of spectrum for noncommercial broadcasters was intended to provide services which would complement those provided by commercial broadcasters and enrich the options available to the public in communities throughout the nation.

I. A Lottery System Cannot Work

We are opposed to the Commission's proposal for a lottery system and prefer the use of a point system to resolve mutually-exclusive applications.

- A lottery system which does not require any qualifications for application will encourage a proliferation of overfilers for NCE frequencies. It will create a system in which aspiring "broadcaster" which qualifies as a non-profit organization, no matter how frivolous or questionable the bona fides of the applicant, could hold hostage the plans of a serious entity genuinely seeking to serve the public. Furthermore, it could result in awards of scarce NCE spectrum to entities incapable of providing useful NCE service.

- The Commission's proposal would arbitrarily prejudice the system against licensees with multiple holdings. We agree with the Commission's goal of encouraging diversity in the NCE spectrum, but public service should not be sacrificed in the interests of diversity. Experienced NCE broadcasters are the entries most likely to provide professional, high-quality broadcast services. These experienced NCE broadcasters are also the most likely applicants to be licensees with multiple holdings, or applicants with state-wide NCE networks. Over the course

of time, these broadcasters (who have undertaken this work because of its importance, not for the possibilities of profit) have learned hard lessons about broadcast operations, professional standards, customer service and the special nature of reaching and serving people who will pay for these services through direct contributions. These broadcasters have built the public broadcasting system into a vital and highly-prized part of American broadcasting, and their expertise is one of the nation's most valuable broadcast resources.

II. No Local Diversity or Minority Ownership Credits

The local diversity credit proposed by the Commission does not, in our opinion, resolve the Commission's concerns. It favors non-local applicants with hundreds of stations across the country, but without any overlap in the principal community contour of a proposed NCE station, over a truly local applicant seeking to extend its signal to an outlying area if the proposed facilities have an overlap, no matter how slight, with the applicant's current station. The proliferation of nationwide "networks" of NCE radio stations runs in the face of the Commission's expressed concerns for diversity, but the proposed local diversity credit would only serve to favor these broadcasters who have no local interests.

If the Commission wants to move forward, lift the freeze on the processing of mutually-exclusive NCE applications and reestablish a fair and equitable system of awarding NCE licenses, then it must abandon minority ownership preferences or credits in a point system. Such a proposal would only guarantee that the confusion which has prevailed since Real Life Educational Foundation of Baton Rouge, Inc., 6 FCC Rcd. 2577 (Rev. Bd. 1991), where the Commission's Review Board found existing NCE criteria "vague" and "meaningless", would continue to reign and tie up mutually exclusive NCE applications. We fail to see where the

application of racial classifications to NCE applications would serve the public interest. It has failed in the past and will continue to fail in the future. Further, such criteria will not resolve the log jam; it will only encourage appeals and litigation, thus continuing the current stalemate.

III. Suggested Option: One-Step Review

We are in favor of a point system, with an emphasis on localism and technical ability and experience. There may be another option - or an additional option - which we present for the Commission's consideration.

The Commission could establish a one-step review procedure by staff to judge competing proposals on the basis of how well local communities would be served. The NCE application would require the submission of a five-year plan, demonstrating in a variety of areas, how its proposed service would benefit the public interest economically, enrich it civically and make the best and highest use of spectrum. To ensure that proposals would not be frivolous, or worse, fraudulent, the winning applicant should be bound by the terms of its license to fulfill the goals of its proposal during the first license term. Such licensees would be required to file yearly progress reports and failure to achieve the proposed goals could result in warnings or fines. Such failure to achieve goals could also be a criterion in license renewal proceedings.

IV. Conclusion

We share other commenters' concerns over the proposed lottery system. National Public Radio ("NPR") has proposed a viable point system in its comments to the Commission submitted in response to this Notice. Although the final proposal should be simpler and more straight forward to minimize burdens on applicants, the system NPR proposes is thoughtful and its principles are sound. We urge the Commission to pursue the NPR proposal as the basis for its

final order. The emphasis in NPR's proposal is on local NCE service and would operate to allow the Commission the best means to choose between competing applicants.

The Commission should use this opportunity to close another potential avenue for abuse in the NCE application process. At present, there is no requirement that NCE applicants file evidence of their NCE status with the Commission. We see applications where the applicant claims to have tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code (the "IRS"), and upon investigation, this turns out to be untrue. We see applications where the applicant claims to be a non-profit corporation, but upon investigation, the claimed state of organization has no record of such a non-profit corporation. The Commission should require that all pertinent organizational documents be part of an NCE application. If an applicant makes claims as to tax-exempt status, then a letter of determination from the IRS should be included as part of the application. Such documentation is routinely required when non-profit applicants seek grants, PTFP funding or make other applications. No less should be required of those seeking to claim a piece of scarce NCE broadcast spectrum.

Finally, time-sharing does not appear to be a viable means of resolving competing NCE applications in the event of a tie under a point system. The very nature of noncommercial broadcasting attracts applicants with vast ideological differences. We do not believe that any such option could be in the public interest.

Whatever decision the Commission reaches, we urge that the process retain Commission oversight of NCE frequencies in some manner. The Commission's recent decision to utilize auctions to resolve conflicts in commercial applications recognized that the financial resources of applicants can be effective measures in distinguishing between proposals whose primary purpose is profit. There is no comparable mechanism in the proposed lottery system for resolving

conflicts in NCE applications, where the primary purposes are dissemination of ideas and cultural enrichment. These core considerations are left almost completely to chance in the Notice.

For the foregoing reasons, we urge the Commission to adopt a point system to resolve competing NCE applications. We believe that NPR has proposed a valuable framework on which to build such a system.

Respectfully submitted,

THE EXECUTIVE COMMITTEE OF
THE TRUSTEES OF BOSTON UNIVERSITY
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